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Supreme Court of the United States

October Term, 1975

No. 75-288 Misc.

In the Matter of the Application
of Samuel H. Sloan for waiver of
the educational requirements of
22 NYCRR 520.3, 520.4, 520.5.

~~JURISDICTIONAL STATEMENT AND~~ MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION TO THE STATE OF NEW YORK COURT OF APPEALS

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JURISDICTIONAL STATEMENT AND MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION TO THE STATE OF NEW YORK COURT OF APPEALS

This is a jurisdictional statement as required as by Rule 13(2) of the Rules of this Court.

PLEASE TAKE NOTICE that pursuant to Rule 31 of the Rules of this Court the undersigned hereby moves this Court for leave to file a petition for a writ of mandumus and/or prohibition to the State of New York Court of Appeals.

DECISIONS BELOW

The unreported decision of the State of New York Court of Appeals, in which the application by Samuel H. Sloan for a waiver of the educational requirements of NYCRR 520.3, 520.4 and 520.5 was summarily denied, appears in the appendix p. 21.

JURISDICTION

The summary denial of the State of New York Court of Appeals for a waiver of the educational requirements of 22 NYCRR 520.3, 520.4 and 520.5 was dated July 3, 1975. The appellate jurisdiction of this court is invoked under 28 U.S.C. §1257(2) and Rule 10 of the Rules of this Court inasmuch as the State of New York Court of Appeals has decided a question as to the validity of 22 NYCRR 520.3, 520.4 and 520.5 on the ground of these rules being repugnant to the Constitution of the United States and the decision is in favor of its validity.

The jurisdiction of this court to issue a writ of mandamus and/or prohibition is invoked under the All Writs Act, 28 U.S.C. 1651(a), inasmuch as the issuance of such a writ is necessary and appropriate in the aid of the jurisdiction of this court.

The appellate jurisdiction of this court is sustained under *Burns v. Ohio*, 360 U.S. 252 (1959). The letter from the Clerk of the State of New York Court of Appeals which informed the appellant that his application for a waiver of the educational requirements of NYCRR 520.3, 520.4, and 520.5 had been denied was a final judgment or decree for the purposes of 28 U.S.C. 1257. A "decree" is defined as a judicial determination. The requirement of finalty is satisfied when the record shows that the state appellate court has in fact adjudicated rights and that that adjudication is not subject to further review by a state court. *Department of Banking v. Pink*, 317 U.S. 264 (1942); *Market Street Railway Co. v. Railroad Com.*, 324 U.S. 548 (1945); *Richfield Oil Corp. v. State Board of Equalization*, 329 U.S. 69 (1946). Furthermore, this proceeding is a suit. The term suit is a comprehensive one and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords him. *Weston v. Charlestown*, 27 U.S. (2 Pet) 449 (1829).

The jurisdiction of this Court to issue a writ of mandamus and/or prohibition is invoked as necessary and appropriate in the aid of its appellate jurisdiction. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); *Ex parte Peru*, 318 U.S. 578, 582 (1943); *Chandler v. Judicial Council*, 398 U.S. 74, 86 (1970). Under appropriate circumstances, mandamus will lie to require an inferior court to admit an attorney to the practice of law in that court. *Barnes v. Lyons*, 187 Fed 881 (CCA9, 1911); *Ex parte Burr*, 22 U.S. (9 Wheat) 529 (1824); *Ex parte Secombe*, 60 U.S. (19 How) 9 (1857).

QUESTIONS PRESENTED

1. Is the requirement that one attend law school in order to be admitted to the practice of law in the State of New York unconstitutional?

2. Did the State of New York Court of Appeals deprive the appellant of the rights guaranteed to him by the First, Fifth and Fourteenth Amendments to the Constitution of the United States by denying his application for a waiver of the educational requirements of 22 NYCRR 520.3, 520.4, and 520.5?

3. Is there a constitutional right to practice law?

4. Are all state laws, rules and regulations which provide for the licensing of attorneys and counselors at law unconstitutional in that they infringe upon the First Amendment right to petition the government for a redress of grievances?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

That part of Amendment V to the United States Constitution which is involved provides:

"No person shall . . . be deprived of life liberty or property without due process of law. . . ."

That part of Amendment XIV to the United States Constitution which is involved provides:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

22 NYCRR 520.3(a) provides:
Prelegal education

"General. Before commencing the study of law an applicant for admission to the New York State bar examination must have successfully completed at least three years of acceptable work in an accredited post secondary institution, or its equivalent, as defined in subdivision (c) of this section, except as otherwise provided in this section."

22 NYCRR 520.4(a) provides:

Study of law in law school.

"General. An applicant may qualify to take the New York State bar examination by submitting to the New York State Board of Law Examiners satisfactory proof:

(1) that he commenced the study of law after he had reached his 18th birthday; and

(2) that he commenced the study of law after complying with the provisions of section 520.3; and

(3) that he attended and was graduated with a first degree in law from a law school or law schools which at all times during the period of his attendance was or were approved."

22 NYCRR 520.5(a) provides:
Study of law in law office

"General. An applicant may qualify to take the New York bar examination by submitting to the New York State Board of Law Examiners satisfactory proof:

(1) that he commenced the study of law after he had reached his 18th birthday; and

(2) that he commenced the study of law after complying with the provisions of section 520.3 of these rules, and

(3) that he attended an approved law school as a matriculated student for at least one year, and

(4) that he thereafter studied law in a law office or offices located within New York State under the supervision of one or more attorneys admitted to practice law in New York State, for such a period of time as, together with the credit allowed to him pursuant to this section for attendance in an approved law school, shall aggregate four years."

22 NYCRR 520.10 provides:

Application for waiver of rules.

"The Court of Appeals, upon application, may in its discretion, vary the application of or waive any provision of these rules where strict compliance will cause unnecessary hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief. If the petition is verified outside

the State of New York, the applicant shall secure and append to the affidavit of verification of the petition a certificate of the county clerk or other authorized officer that the notary before whom the applicant was sworn was qualified to act at the time the oath was taken."

The full text of 22 NYCRR 520.3, 520.4 and 520.5 are set forth in the Appendix pp. 26-31.

STATEMENT OF THE CASE

In a verified petition sworn to the 4th day of June, 1975 the appellant, Samuel H. Sloan, applied to the State of New York Court of Appeals for a waiver of those Rules for the Admission of Attorneys and Counselors of Law which set forth educational requirements for admission to the bar. The petition was grounded upon the assertion that the rules in question were unconstitutional. In a letter dated July 3, 1975, Joseph W. Bellacosa, Clerk of the Court, advised the appellant that his verified petition had been denied.

HOW FEDERAL QUESTIONS WERE PREVIOUSLY PRESENTED

In his memorandum of law submitted to the State of New York Court of Appeals, the appellant argued that the requirement that one attend law school as a pre-requisite to the taking of the bar examination deprived him of "liberty" and "property" without due process of law and thereby deprived him of rights guaranteed to him by the Fifth and Fourteenth Amendments to the Constitution of the United States. On this point, the appellant cited *Konigsberg v. State Bar of California,* 353 U.S. 252 (1957); *Schware v. Board of Bar Examiners,* 353 U.S. 232 (1957) and *Greene v. McElroy,* 360 U.S. 474 (1959). The appellant also argued that the requirement that one attend law school in

order to become a member of the bar is arbitrary and capricious and bears no relation to the object sought to be attained. On this point the appellant cited *DeFunis v. Odegaard,* 416 U.S. 312 (1974) and "New Directions in Legal Education" by Herbert L. Packer and Thomas Ehrlich. The appellant further asserted that the State of New York Court of Appeals was obliged to consider the constitutional questions on the merits and to grant the requested relief because the appellant had no other remedy. Here, the appellant cited *Pierson v. Ray,* 386 U.S. 547 (1967) as well the discussion of *Johnson v. Committee on Examinations,* 407 U.S. 915 (1973) and *Johnson v. Wilmer,* 415 U.S. 911 (1974) which is found in *DeFunis, supra,* 416 U.S. at 341-2 (Douglas, J., dissenting). The appellant also cited other cases which deal with the relationship between state and federal courts on constitutional questions.

GROUNDS UPON WHICH IT IS CONTENDED THAT THE FEDERAL QUESTIONS ARE SUBSTANTIAL

This proceeding involves questions of constitutional law. It is submitted that the questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution.

What the petitioner is seeking here is the right to hold specific private employment and to follow a chosen profession, namely, the practice of law, free from unreasonable governmental interference. It is well established that this right comes within the "liberty" and "property" concepts of the Fifth Amendment. *Dent v. West Virginia,* 129 U.S. 114; *Allgeyer v. Louisiana,* 165 U.S. 578, 589, 590 (1897); *Schware v. Board of Bar Examiners, supra; Peters v. Hobby,* 349 U.S. 331, 352 (concurring opinion); *Slochower v. Board of Education,* 350 U.S. 551; *Truax v. Raich,* 339 U.S. 33, 41, 60; *Powell v. Pennsylvania,* 127 U.S. 678, 684; *Greene v. McElroy,*

supra. It has also been held that a State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the appellants' fitness or capacity to practice law. *Schware v. Board of Bar Examiners, supra,* 353 U.S. at 239 cf. *Douglas v. Noble,* 261 U.S. 165, *Cummings v. Missouri,* 4 Wall 277, 319, 320; *Nebbia v. New York,* 291 U.S. 502. It has been established that where there is a significant encroachment upon personal liberty, the state may prevail only upon showing a subordinating interest which is compelling. *Bates v. Little Rock,* 361 U.S. 516, 525 (1960), *NAACP v. Button,* 371 U.S. 415, 439 (1963).

Thus, one question for this court to decide is whether there is a compelling state interest in requiring that all persons must attend law school in order to be admitted to the practice of law in New York State, whether such a requirement is reasonable, and whether a state can constitutionally require that one attend law school as a prerequisite to admission to the bar in order to insure a "high standard" of qualification.

It is submitted that the answer to this question is evident. The only reasonable basis for the requirement that one attend law school in order to become a member of the bar would be the basis that a formal study of law is required to gain the knowledge needed to pass the bar examination. However, if one can acquire this knowledge through independent study and demonstrate this knowledge by passing the bar examination, it follows that a formal study of law is unnecessary.

One of the great traditions of this nation is that of permitting individuals to achieve prominance who have not had the benefits of a formal education. Every student in elementary school is taught that Abraham Lincoln studied law books by candle light. The lesson that the schools fail to teach is that Abraham Lincoln, were he alive today,

would be denied the opportunity to practice law because he never attended law school. A more recent example is Mr. Justice Black who served ably on the United States Supreme Court for 34 years although he never had the benefit of a formal legal education. Among the many accomplishments of Mr. Justice Black were the majority opinions, written by him, in *Schware v. Board of Bar Examiners, supra; Konigsburg v. State Bar of California, supra; Brotherhood of Railroad Trainmen v. Virginia State Bar,* 377 U.S. 1 (1964); *United Mine Workers v. Illinois Bar Association,* 389 U.S. 217 (1967) and *Baird v. State Bar of Arizona,* 401 U.S. 1 (1971). It should be evident from these decisions, all of which bear on the questions presented here, that Mr. Justice Black, who never attended law school, did not believe that the fact that a person had received the benefit of a formal legal education was sufficient to accord to that person any special rights, privileges and/or immunities.

It is probably fair to say that there has always been doubt among members of the legal profession as to whether the ability to achieve high grades in school has any relation to the ability one might display as a member of the legal profession. In "New Directions in Legal Education" by Herbert L. Packer and Thomas Ehrlich, published by the McGraw-Hill Book Co., a study which was originally funded by the Carnegie Foundation, a well documented argument is made that formal legal education does little if anything to prepare one for the practice of law. The fact that many law schools do not teach trial technique is a matter of continuing controversy within the legal profession.

In the case at the bar, it is unlikely that the petitioner could gain admission to law school. The petitioner never graduated from college and was always a mediocre student whenever he attended school. Furthermore, he could not expect to be admitted into law school until the September, 1976 term since there are no law schools which are still

accepting applications for the September, 1975 term. In addition, even if he were admitted to law school there remains the possibility that he might experience academic failure in view of the fact that he has never done well in school in the past.

At an earlier time in the history of the United States the issue raised by this petition would not likely have arisen. As Justice Douglas noted in *DeFunis:*

> "There was a time when law schools could follow the advise of Wigmore, who believed that the way to find out whether a boy has the makings of a competent lawyer is to see what he can do in a first year of law studies." Wigmore, Juristic Psychopoyemetrology—Or, How to Find Out Whether a Boy Has the Makings of a Lawyer, 24 Ill. L. Rev. 454, 463-464 (1929). In those days there were enough spaces to admit every applicant who met minimal credentials, and they all could be given the opportunity to prove themselves at law school." *DeFunis, supra,* 416 U.S. at 327.

However, this no longer is the situation as *DeFunis* demonstrates. In that case there were 1,600 applicants to fill 150 places available in law school. When *DeFunis* was denied admission, he instituted suit, presumably because he could not gain admission to any other law school.

Prior to January 1, 1974 one could satisfy the educational requirements for admission to the practice of law in New York State by studying law in a law office for a period of four years. At that time Regulation 524.1 was in effect which stated:

> "An applicant may qualify to take the Bar examination by submitting to the Board of Law Examiners satisfactory proof (a) that he entered upon the study of law after complying with the provisions of Rule III-Preleagal Education, and after he had reached his eighteenth birthday, and

> (b) that he pursued the study of law for a period of four calendar years in the law office or law offices of one or more attorneys who have been admitted to practice before the Supreme Court of the State."

However, on January 1, 1974 the present rules 22 NYCRR 520.3, 520.4, and 520.5 came into effect thereby terminating this traditional avenue for gaining admission to the practice of law. As a result of this change, many persons who had been studying law in law offices prior to January 1, 1974 in anticipation of gaining admission to the practice of law found themselves unable to realize their plans.

The effect of the rule change which occurred on January 1, 1974 was to discriminate against persons who had not attended law school and who desired to be admitted to the practice of law after January 1, 1974 and to discriminate in favor of persons who had had similar qualifications and had sought to be admitted to the bar prior to January 1, 1974. It is submitted that the fact that prior to January 1, 1974 persons who had not attended law school might nevertheless have been deemed sufficiently qualified to be admitted to the practice of law in New York State demonstrates the arbitrary, capricious and discriminatory nature of the present rule.

There is no compelling state interest in requiring that a person attend law school prior to gaining admission to the practice of law. In fact, the compelling state interest is quite the opposite. The state has a compelling interest in insuring that all persons be admitted to the practice of law who are capable of providing adequate legal representation. In the licensing of professionals in other fields, the State of New York as well as most other states have adopted relatively liberal standards. For example, in the medical profession, the State of New York will license graduates of medical schools in foreign countries which have vastly lower standards than the medical schools in the United

States. The rational for this is that there is a shortage of medical doctors in New York State and elsewhere and there is a compelling state interest in insuring that all persons who meet minimal standards are permitted entry into the medical profession.

The supply of lawyer manpower is not nearly large enough. *Hackin v. Arizona,* 389 U.S. 143, 147 (1967) (Douglas, J., dissenting). Furthermore, this shortage appears to have been artifically created. *Id.* Nevertheless, the New York State legislature has been unwilling to liberalize the standards for gaining admission to the legal profession while at the same time it has liberalized the standards for gaining admission to other professional occupations. In fact, on January 1, 1974, the educational requirement for gaining admission to the practice of law in New York State became significantly more stringent. The reason for this anomaly is, of course, the fact that the majority of the members of the New York State legislature are themselves practicing attorneys who have a pecuniary interest in restricting admission to the legal profession.

The same is true of judges. Unlike federal judges, judges in New York State are required to stand for election from time to time and therefore must face the prospect of someday returning to private practice. Consequently, the judges who promulgated 22 NYCRR 520.3, 520.4 and 520.5 had a pecuniary interest in limiting the number of persons who are permitted to gain admission to the practice of law. Those with substantial pecuniary interest in legal proceedings should not adjudicate those disputes. *Gibson v. Berryhill,* 411 U.S. 564, 579 (1973); *Tumey v. Ohio,* 273 U.S. 510 (1927); *Ward v. Village of Monroeville,* 409 U.S. 57 (1972). Furthermore, judges are not permitted to enter upon policy determinations for which judicially manageable standards are lacking. *Baker v. Carr,* 369 U.S. 186, 198, 226 (1962). In addition, it is of the highest importance for a judge to avoid the appearance of impropriety

as well as the actual existance thereof. *Taylor v. Hayes,* 418 U.S. 488 (1974).

In *Hackin v. Arizona, supra,* and in *Lathrop v. Donahue,* 367 U.S. 820, 877 (1961) (dissenting opinion) one of the justices of this Court seemed to express the view that lay persons should be permitted to practice law and to represent clients. The question of whether there is a constitutional "right" to practice law has never been squarely faced by the United States Supreme Court and it is submitted that it should be faced here. The appellant stands prepared to take the bar examination for the purpose of demonstrating that he is qualified to practice law in New York State. However, this is hardly a major concession since, in New York State, the overwhelming majority of persons who take the bar examination achieve a passing score. Nevertheless, from a proceedural and jurisdictional point of view, it is significantly easier for this court to require the State of New York Court of Appeals to admit the appellant to the practice of law in New York State than it is for this Court to require, via a writ of mandamus and/or prohibition, that the appellant be permitted to take the bar examination. Moreover, the bar examination of the State of New York was administered on July 22 and 23, 1975, just prior to the filing of this jurisdictional statement and motion, and it would seem unfair to require the appellant to wait until 1976 to take the next bar examination if he, in fact, presently possesses the constitutional right to practice law.

It is submitted that there exists a constitutional right to practice law under the First Amendment right to Freedom of Speech, Freedom of Association and Freedom to Petition for a Redress of Grievances. It is further submitted that there exists a constitutional right to practice law under the Fifth and Fourteenth Amendment rights not to be deprived of liberty and property without due process of law. In a more limited context this view was upheld in *NAACP v. Button, supra; Brotherhood of Railroad Trainmen v.*

Virginia State Bar, supra and *United Mine Workers v. Illinois Bar Association, supra.* In all of these cases, the Supreme Court held that specific conduct, which was otherwise illegal, was protected by the First Amendment.

As Mr. Justice Harlan noted in his dissent in *United Mine Workers*, 389 U.S. at 228, if the First Amendment can be said to protect the specific conduct which was the subject of that and similar Supreme Courts decisions, then there is no reason that a person cannot employ a layman as his advocate in a court of law. It is submitted that this reasoning by Mr. Justice Harlan is correct and that therefore the constitutional right to practice law is established by the very decisions with which he disagreed. Since Mr. Justice Harlan frequently considered himself bound by Supreme Court decisions in which he had dissented, he might well have been forced to subscribe to the proposition that the appellant is advancing in the instant case.

The First Amendment to the Constitution of the United States specifically guarantees the right to petition the government for a redress of grievances. There can no longer be any doubt that First Amendment rights are absolute and are carried through to the states by the Fourteenth Amendment. Neither can there be any doubt that the "government" includes the courts which are but branches of the government. Thus, there is an absolute First Amendment right to petition the courts for a redress of grievances. Most persons who petition the courts for a redress of grievances chose to hire an advocate or an attorney to represent them. Clearly, neither the state nor the courts can constitutionally restrict or regulate advocacy nor can they deny admission to the courts to all but a chosen few. This means that there is and can be no licensing proceedure for attorneys at law consistent with the First Amendment of the Constitution of the United States.

This is not to say that the courts may not discipline

attorneys who appear in cases before them and who interfere with the administration of justice. Nor is it to say that the local bar associations are required to admit all applicants. The local bar association should be like the local Moose Lodge* and admit anyone it pleases. However, under the First Amendment to the Constitution, no person can be compelled to hire a member of the local bar association as his representative, advocate, or attorney in court. Thus, if one wants to hire John Mitchell or John Dean as his attorney there can be no restriction in his so doing.

This is not to be regarded as a radical view or a view contrary to those "so rooted in the traditions and conscience of our people as to be ranked as fundamental." See *Roe v. Wade*, 410 U.S. 113, 174 (1973) (Rehnquist, J., dissenting). Rather, what has just been expressed *is* the traditional view. The licensing attorneys by the states is a relatively recent practice in the history of the United States. Licensing has brought with it litigation almost all of which has occurred during the past eighteen years. As Mr. Justice Black stated in *Baird v. State Bar of Arizona, supra:*

> "With sharp divisions in this Court, our docket and those of the Court of Appeals have been filled for years with litigation involving inquisitions about beliefs and associations and refusals to let people practice law and hold public or even private jobs solely because public authorities have been suspicious of their ideas." 401 U.S. at 3.

The principal Supreme Court Decisions which deal with constitutional questions involving the practice of law, other those previously cited herein, are:

> *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961); *Re Anastaplo*, 366 U.S. 82 (1961); *Cohen v. Hurley*, 366 U.S. 117 (1961); *Martin v.*

*See *Moose Lodge 107 v. Irvis*, 407 U.S. 163 (1972).

Walton, 368 U.S. 25 *rehearing denied* 368 U.S. 945 (1961); *Re Stoler*, 401 U.S. 23 (1971); and *Law Students Civil Rights Council, Inc. v. Wadmond*, 401 U.S. 154 (1971).

All of this adds up to a lot of litigation. It is submitted, however, that in all of this litigation the right question has not been asked, or at least it has not been asked in the right way. For example, in both decisions entitled *Konigsberg v. State Bar of California*, the question before the court was whether the State of California could refuse a license to practice law based upon the repealed refusal of the applicant to answer questions as to his membership in the Communist party. Apparently, in this and other cases, none of the parties argued that under no circumstances may the state establish any licensing proceedures which involve the regulation of attorneys. That, however, is precisely what the appellant is arguing here.

To summarize: In this appeal the appellant contends (1) that 22 NYCRR 520.3, 520.4 and 520.5 are unconstitutional on their face or at least as applied to the appellant in that they are arbitrary, capricious and discriminatory and deny rights guaranteed by the First, Fifth and Fourteenth Amendments to the Constitution of the United States and (2) that these same rules are unconstitutional in that any state statutory scheme which provides for a licensing and regulation of attorneys is unconstitutional under the specific First Amendment right to petition the government for a redress of grievances. On this last point, it is submitted that any statutory scheme which provides for the licensing and regulation of attorneys is no less unconstitutional than a statutory scheme would be which would require that all newspapers need be licensed and that their conduct, content, and distribution be regulated by the state.

Finally, it is submitted that the motion for leave to file a petition for a writ of mandamus and/or prohibition should

be granted. Due to the nature of the result in the court below, there is a question as to how otherwise this court could exercize its appellate jurisdiction. The reason for this is that the court below "decided not to issue a formal order of denial" of the petition of the appellant. Therefore, the motion for leave to file should be granted although a formal writ need not be issued unless and until the Supreme Court finds the actual issuance of an extraordinary writ to be necessary. *United States v. Haley*, 371 U.S. 18 (1962).

CONCLUSION

For all of the reasons set forth above this Court should require plenary consideration with briefs on the merits and oral argument for their resolution and, in addition, the motion for leave to file the petition for a writ of mandamus and/or prohibition should be granted.

Respectfully submitted,

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503
(804) 384-1207
Appellant pro se

Appendix

APPENDIX A—LETTER DATED JULY 3, 1975 DENYING APPLICATION

[Letterhead of State of New York, Court of Appeals, Joseph W. Bellacosa, Clerk of the Court, Clerk's Office, Albany 12207.]

July 3, 1975

Mr. Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia

In the Matter of the Application
of Samuel H. Sloan
for waiver of the educational
requirements of 22 NYCRR 520.3,
520.4, 520.5.

Dear Mr. Sloan:

I am directed by the Court of Appeals to advise you that your petition in the above captioned proceeding verified June 4, 1975 has been denied. The Court has decided not to issue a formal order of denial with respect to the above entitled matter.

Very truly yours,
s/ Joseph W. Bellacosa
Joseph W. Bellacosa

AO'B/dh

APPENDIX B—NOTICE OF APPEAL

COURT OF APPEALS
STATE OF NEW YORK

In the Matter of the Application of Samuel H. Sloan for waiver of the Educational requirements of 22 NYCRR 520.3, 520.4, 520.5.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the undersigned hereby appeals to the Supreme Court of the United States from all parts of the decision of the State of New York Court of Appeals dated July 3, 1975 in which the application of Samuel H. Sloan for a waiver of the educational requirements of 22 NYCRR 520.3, 520.4, and 520.5 was denied.

Dated: Lynchburg, Virginia
July 21, 1975

Yours, etc.
s/ Samuel H. Sloan
Samuel H. Sloan
Petitioner, pro se
917 Old Trents Ferry Road
Lynchburg, Virginia 24503
(804) 384-1207

Copies to:
Ruth K. Toch
Solicitor General
The Capitol
Albany, N.Y.

State Board of Law Examiners
90 State Street
Albany, N.Y. 12207

State of New York Bar Association
One Elk Street
Albany, N.Y.

APPENDIX C—NEW YORK STATE COURT OF APPEALS RULES FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW AND RULES OF THE STATE BOARD OF LAW EXAMINERS

New York State
COURT OF APPEALS

Rules for
the Admission of Attorneys
and
Counselors at Law

Rules
of
the State Board of Law Examiners

Notice

The material contained in this booklet has been excerpted from Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It may be cited by Title and Section.

For example: **22 NYCRR 520.9**

SUBCHAPTER B

Rules for Admission of Attorneys and Counselors at Law

PART

520 Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law

PART 520

RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW

(Statutory authority: Judiciary Law, § 53)

Sec.		Sec.	
520.1	General	520.6	New York State bar examinations
520.2	Admission upon examination	520.7	Examination dispensed with
520.3	Prelegal education	520.8	Admission without examination
520.4	Study of law in law school	520.9	Proof of moral character
520.5	Study of law in law office	520.10	Application for waiver of rules

Historical Note

Part (§§ 520.1-520.5) amd. filed July 7, 1972 eff. Sept. 1, 1972. New Part (§§ 520.1—520.10) substituted.

Section 520.1 General. (a) A person shall be admitted to practice law in the courts of the State of New York only upon an order of the Appellate Division of the Supreme Court admitting him to practice upon compliance with these rules.

(b) *Saving clause.* The rules of the Court of Appeals for the admission of attorneys and counselors at law in effect at the time an applicant for admission commenced the study of law, to the extent that the application thereof was or would have been less restrictive or burdensome, shall determine his eligibility for admission to practice.

Historical Note

Sec. amds. filed: July 7, 1972; Oct. 12, 1972; Dec. 28, 1972; May 9, 1974. renum. (a) to be (b), and amended (b). Deleted (b),

520.2 Admission upon examination. (a) *Proof required by the New York State Board of Law Examiners.* An applicant for admission to the New York State bar examination shall furnish to the New York State Board of Law Examiners proof satisfactory to said board:

(1) that he is over 21 years of age; and

(2) as to the date and place of his birth; and

(3) (i) that at the time of making such application and for a period of at least six months immediately prior thereto, he is and has been either an actual resident of the State of New York or employed full time in this State, or

(ii) that at the time of making such application, he is and has been an actual resident of this State for a period of less than six months or, if not, that he intends in good faith to establish actual residence in this State not later than two months after the date fixed for the New York State bar examination, and intends in good faith to maintain such actual residence for a period of at least six months prior to applying for admission to practice, or

(iii) that at the time of making such application, he is and has been employed full time in this State for a period of less than six months or, if not, that he intends in good faith to commence full time employment in this State not later than two months after the date fixed for the New York State bar

examination, and intends in good faith to continue to be so employed for a period of at least six months prior to applying for admission to practice; and

(4) that he has complied with section 520.3, as evidenced by either:

(i) a certificate of his graduation with an approved degree from an accredited post secondary institution, or

(ii) a law student's qualifying certificate issued to him by the New York State Education Department; and

(5) that he has complied either with section 520.4 or with section 520.5. Proof of compliance with section 520.4 or section 520.5 must be made in accordance with the rules of the New York State Board of Law Examiners.

(b) *Proof required for certification.* An applicant admitted to the New York State bar examination pursuant to subparagraph (a)(3)(ii) or (a)(3)(iii) of this section shall not be certified to the Appellate Division by the New York State Board of Law Examiners until he has furnished proof to such board that he has been an actual resident of, or has been employed full time in, the State of New York for a period of at least six months immediately prior to such certification.

(c) *Employment defined.* Any lawful employment, whether or not related to the field of law, shall satisfy the requirements of this section relating to employment in this State.

Historical Note

Sec. amds. filed: July 7, 1972; Oct. 12, 1973; Dec. 28, 1973; May 9, 1974. Substituted new (a)(3) and (b) and added (c).

520.3 Prelegal education. (a) *General.* Before commencing the study of law an applicant for admission to the New York State bar examination must have successfully completed at least three years of acceptable work in an accredited post secondary institution, or its equivalent, as defined in subdivision (c) of this section, except as otherwise provided in this section.

(b) *Accredited institution defined.* An accredited post secondary institution is one whose programs are registered by the New York State Education Department, or which is a member of or accredited by an accrediting agency recognised by the New York State Education Department.

(c) *Equivalent work defined.* Credit may be granted for work completed:

(1) In an unaccredited post secondary institution, provided:

(i) the unaccredited post secondary institution is determined by the New York State Education Department to be a bona fide institution of higher education; and

(ii) the applicant has satisfactorily validated the work completed in the unaccredited post secondary institution by thereafter successfully completing, in an accredited post secondary institution, at least 30 semester hours of additional work with a scholastic average at least equal to the quality of work required for graduation in the accredited post secondary institution. Provided further that the work done in the unaccredited institution will be validated only to the extent that it is acceptable to the accredited institution towards the awarding of its degree; or

(iii) the applicant attains a satisfactory score on the graduate records examination, or similar examination recognized by the New York State Education Department. A satisfactory score in such examination or examinations shall mean that the applicant's final score or average of all part-scores on the examination or examinations shall be no lower than the mean or average of the mean established in the norms for such examination or examinations. Provided further that no single part-score in any area examined shall be lower than one standard deviation below the mean established in the norms.

(2) Where the applicant has not attended a post secondary institution, but

(i) has successfully completed a four-year secondary school course of study, or the equivalent thereof, as approved by the New York State Education Department, and

(ii) has successfully completed work satisfactory to the New York State Education Department, equivalent to three years of post secondary education primarily in the liberal arts or general education, as evidenced by the passing of the graduate records examination, or similar examinations recognized by the New York State Education Department. A satisfactory score in such an examination or examinations shall mean that the applicant's final score or average of all part-scores on the examination or examinations shall be no lower than the mean or average of the mean established in the norms for such examination or examinations. Provided further that no single part-score in any area examined shall be lower than one standard deviation below the mean established in the norms.

Where credit for prelegal education is given pursuant to this section, the additional post secondary work must have been completed or the equivalency examination or examinations must have been successfully passed prior to the commencement of law study.

(d) *Three years' post secondary work defined.* Three years' post secondary work means three years of attendance and study at an accredited post secondary institution and successful completion of at least three-quarters of the work acceptable for an approved bachelor's degree or equivalent degree granted on the basis of a four-year period of study with a scholastic average, based on all work undertaken, at least equal to the quality of work required for graduation from the institution attended. Such work shall include at least 45 semester hours of liberal arts and sciences acceptable to the New York State Education Department.

(e) *Approved degree defined.* An approved degree is one which is granted upon the successful completion of a program of study which is registered by the New York State Education Department.

(f) *Credit for off-campus courses.* Acceptable work may include work done in courses conducted off campus in regular class sessions conducted by and under the personal supervision of members of the instructional staff of the institution attended.

(g) *Credit for study and experience in armed forces.* An applicant who has been in active service in the armed forces of the United States for a period of not less than six months after January 1, 1963, and who has been discharged or relieved from active service under conditions other than dishonorable, may receive credit toward the fulfillment of the prelegal education requirements of this section for study and experience of educational value while in service, subject to the following limitations:

(1) Credit not to exceed eight semester hours may be granted for military service, provided such credit does not duplicate academic credit previously received for physical education or for reserve officers training corps instruction.

(2) Credit may be granted for academic achievement tests on the post secondary level given under the auspices of the United States Armed Forces Insti-

tute, by an accredited post secondary institution or by the New York State Education Department. Credit may also be granted for the completion of courses given by the armed forces of the United States where such courses are on a post secondary level and the applicant has passed examinations therein, provided such courses do not duplicate work for which the applicant has previously received academic credit.

(3) At least one and one-half years of the three years of required post secondary work must have been successfully completed while in attendance at an accredited post secondary institution either as a civilian or as a member of the armed forces.

(4) Subject to the limitations stated in this subdivision, the amount of credit which an applicant shall receive for educational achievement while in the armed forces shall be determined by the New York State Education Department, provided, however, that application may be made to the Court of Appeals, upon the recommendation of an approved law school, for additional credit.

(h) *Credit for prelegal work in a foreign country.* An applicant whose prelegal education was obtained wholly or partly outside the United States may, in lieu of the foregoing, present his credentials to the New York State Education Department for evaluation, in accordance with the provisions of this section, and shall be entitled to commence the study of law upon certification by said department that his qualifications are satisfactory. Prior to the granting of said certification, the New York State Education Department shall determine that the applicant is proficient in his understanding of civilization and culture relevant to American society, and in particular that he has knowledge and understanding of English composition, English and American history, and literature.

(i) *Law student's qualifying certificate.*

(1) Every applicant other than a graduate with an approved degree from an accredited post secondary institution shall procure from the New York State Education Department a law student's qualifying certificate showing that the prelegal education required by this section was completed prior to the commencement of the study of law.

(2) If, however, a graduate of an accredited post secondary institution shall have successfully completed the first year of his law study in an approved law school, and said year of study was a prerequisite for receipt of his degree from such post secondary institution, than such year of law school study may be accepted as part of a prescribed course of law school study with the same effect as if a law student's qualifying certificate had been procured prior to the commencement of such study. An applicant qualifying under this paragraph must file with the New York State Board of Law Examiners a certificate of graduation with an approved degree from an accredited post secondary institution.

Historical Note

Sec. added, filed July 7, 1972; amds. filed: Oct. 12, 1973; Dec. 28, 1973 eff. Jan. 1, 1974. New sec. substituted.

Decisions

1. Need for final course examinations as a prerequisite to taking bar examination

Petition for reconsideration of order of Court of Appeals which provided that, except as otherwise expressly provided in the rules of said court (22 NYCRR Part 523) [cf 22 NYCRR 520.3], no law school graduate might take the July, 1970 bar examination unless his work in courses at law school have been tested by authentic written examination, wherever such examination was appropriate, denied. *In the Matter of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, 29 NY 2d 653 (1970).

520.4 Study of law in law school. (a) *General.* An applicant may qualify to take the New York State bar examination by submitting to the New York State Board of Law Examiners satisfactory proof:

(1) that he commenced the study of law after he had reached his 18th birthday; and

(2) that he commenced the study of law after complying with the provisions of section 520.3; and

(3) that he attended and was graduated with a first degree in law from a law school or law schools which at all times during the period of his attendance was or were approved.

(b) *Approved law school defined.* An approved law school for purposes of these rules is one:

(1) whose program and course of study as shown by the law school's bulletin or catalogue meet the requirements of this section. Such bulletin or catalogue shall be filed annually with the Clerk of the Court of Appeals; and

(2) which is approved by the American Bar Association, or

(3) which is a member of the Association of American Law Schools, or

(4) which is registered and approved by the New York State Education Department.

(c) *Instructional requirement.*

(1) An approved law school shall require for its first degree in law the successful completion of either a full-time or a part-time program which consists of:

(i) a minimum of 80 semester hours of credit, or the equivalent, in professional law subjects, and

(ii) at least 1280 classroom periods of 50 minutes each, including examinations.

(2) Other courses related to legal training taught by members of the faculty of said law school or university may, in the discretion of the law school, be substituted for professional law subjects to the extent of no more than 10 of the required 80 semester hours.

(3) No credit shall be allowed for correspondence courses.

(4) All study shall be evaluated by authentic written examination, except where such examination is inappropriate, such as in seminar and practice court courses or courses which are principally concerned with legal writing and research.

(5) Clinical and like courses may, in the discretion of the law school, be substituted for classroom periods to the extent of no more than 15 percent of the total semester hours comprising the applicant's program of study, where:

(i) a description of the course has been filed with the Clerk of the Court of Appeals, either separately or in the law school's annual catalogue or bulletin; and

(ii) the course is under the direct and immediate supervision of a member of the faculty; and

(iii) the course includes adequate classroom meetings or seminars during the same semester in which the clinical work is completed in order to insure contemporaneous discussion, review and evaluation of the clinical experience; and

(iv) the law school certificate of attendance filed with the New York State Board of Law Examiners lists separately the credit allowed for clinical courses or other non-classroom study.

(d) *Full-time program defined.* A full-time program shall consist of at least 96 and no more than 112 calendar weeks in residence including examinations, of at least 10 classroom periods per week, scheduled principally between the hours of nine o'clock in the morning and four o'clock in the afternoon, totaling, not less than 1280 classroom periods of 50 minutes each.

(e) *Part-time program defined.* A part-time program shall consist of at least 128 and no more than 144 calendar weeks in residence, including examinations of at least

eight classroom periods per week, irrespective of the hours at which the classroom periods are scheduled, totaling not less than 1280 classroom periods of 50 minutes each.

(f) *Successful completion defined.* Complete credit for a scholastic year, semester, quarter or summer session in an approved law school in which one or more courses have been failed shall not be given until the passing grades in the courses failed have been earned, or substitute courses successfully completed, or unless the failures are compensated for by a sufficiently high average for the same scholastic year, semester, quarter, or summer session under acceptable regulations established by the law school in which the applicant is matriculated.

(g) *Transfer from one law school program to another.* A student may transfer from a full-time to a part-time program, or from a part-time to a full-time program, at the end of any semester, quarter or other complete academic session. In computing residence credit

(1) each week of a full-time program shall be deemed equal to one and one-third weeks of a part-time program, and,

(2) each week of a part-time program shall be deemed equal to three-fourths of a week of a full-time program.

(h) *Summer session.* Credit may be given for successful completion of courses taken in summer session only if such session is approved by the dean of the law school in which the applicant is matriculated.

(i) *Military service credit.* If a student matriculated in an approved law school has been in regular attendance during at least one-half of any semester, session or quarter, and before the completion thereof enters the armed services of the United States, the law school may, in its discretion, and upon proof that the student has attempted in good faith to defer his entrance until the end of the aforesaid semester, session or quarter, waive attendance during the remainder of such semester, session or quarter, and grant full credit therefor, without examination if the student is in good standing. Such waiver of attendance shall in no event exceed eight weeks.

(j) *Credit for law study in foreign country.* An approved law school may, in its discretion, allow not more than one-third of the total credits required for a first degree in law in a full-time program, or its equivalent, to an applicant who studied law in a law school in a foreign country.

Historical Note

Sec. added, filed July 7, 1972; amds. filed: Nov. 3, 1972; Feb. 22, 1973; June 1, 1973; Dec. 28, 1973 eff. Jan. 1, 1974. New sec. substituted.

520.5 Study of law in law office. (a) *General.* An applicant may qualify to take the New York State bar examination by submitting to the New York State Board of Law Examiners satisfactory proof:

(1) that he commenced the study of law after he had reached his 18th birthday; and

(2) that he commenced the study of law after complying with the provisions of section 520.3 of these rules, and

(3) that he attended an approved law school as a matriculated student for at least one year, and

(4) that he thereafter studied law in a law office or offices located within New York State under the supervision of one or more attorneys admitted to practice law in New York State, for such a period of time as, together with the credit allowed to him pursuant to this section for attendance in an approved law school, shall aggregate four years.

(b) *Employment and instruction requirements.* An applicant studying law in a law office or offices within New York State must be actually and continuously employed during the required period as a regular law clerk and student in a law office, under the direction and subject to the supervision of one or more attorneys admitted to practice law in New York State, and must be actually engaged in the practical work of such law office during normal business hours. In addition, the applicant must receive instruction from said attorney or attorneys in those subjects which are customarily taught in approved law schools.

(c) *Credit for attendance in approved law school.* Credit shall be allowed for attendance in an approved law school as follows:

(1) credit of one full year or 52 weeks shall be allowed for any successfully completed year of a three-year law school program; and

(2) credit of three-quarters of a year or 39 weeks shall be allowed for any successfully completed year of a four-year law school program;

(3) for any period of law school study not successfully completed, credit shall be allowed for the actual time of attendance. In a three-year program, credit shall be allowed on a weekly basis. In a four-year program, credit shall be allowed for three-fourths of the actual time of attendance computed on a weekly basis.

(d) *Vacations.* Vacations taken by the applicant in excess of one month in any year of study shall be deducted from the period of law office study for which credit shall be given, but failure by the applicant to take a vacation shall not decrease the period of study required by this section.

(e) *Certificate of commencement of law office study.* It shall be the duty of the attorney or attorneys with whom a period of law office study is about to be commenced to obtain from, complete and file with the Clerk of the Court of Appeals a certificate of commencement of clerkship, Appendix A-11, *infra.*

(f) *Credit for law study in law office.* Credit shall be given only for study in a law office or offices completed subsequent to the filing of the certificates required by section 520.3(i) (2) and subdivision (e) of this section.

(g) *Proof required.* Compliance with the requirements of this section shall be proved to the satisfaction of the New York State Board of Law Examiners.

Historical Note

Sec. added, filed July 7, 1972; amds.filed: June 1, 1973; Dec. 28, 1973 eff. Jan. 1, 1974. New sec. substituted.

520.6 New York State bar examinations. (a) *General.* The New York State Board of Law Examiners shall conduct periodic written bar examinations consisting of legal problems which a lawyer in general practice may reasonably expect to encounter. The bar examination, for all applicants, shall be a single examination consisting of legal problems in both adjective law and substantive law. The New York State Board of Law Examiners shall prescribe by rule a list of subjects which will indicate the general scope of the bar examinations.

(b) *Uniformity of bar examinations.* The bar examinations shall be as nearly uniform from year to year as is reasonably practicable.

(c) *Reexaminations.* Applicants who have previously failed more than one bar examination in this State shall not be eligible for reexamination in July or August.

(d) *Preservation of papers.* Bar examination papers shall be preserved for a period of four months from the date of the announcement of the results of the bar examination, and may thereafter be destroyed.

(e) *Examination fee.* Every applicant for a bar examination shall pay to the New York State Board of Law Examiners the fee prescribed by section 465 of the Judiciary Law.

Historical Note

Sec. added, filed July 7, 1972; amds. filed Oct. 12, 1973; Dec. 28, 1973; May 9, 1974. Amended (c) and (d).

520.7 Examination dispensed with. (a) The New York State bar examination may be dispensed with in the case of any applicant entitled to examination under these rules who is a graduate of and has received a first degree in law from an approved law school, as defined in section 520.4(b) if it is established:

(1) that he has been in active service in the armed services of the United States for a period of at least 12 months after January 1, 1963, and has been honorably discharged or honorably released from active service, and

(2) that at the time of his entry into the armed service he had been a resident of New York State for the preceding six months or, if he had not so resided in New York State prior to his entry, he has actually resided in New York State continuously during the six months preceding the date of the application to be admitted and certifies by affidavit that he intends to practice law in New York State; and either,

(i) that after January 1, 1963, and after successfully completing two-thirds of the requirements for graduation and for a first degree in law from an approved law school, his course of law school study was interrupted by active service in the armed services for a period of not less than 12 months; or

(ii) that after January 1, 1963, and after successfully completing the requirements for graduation and a first degree in law in an approved law school, he was prevented by active service in the armed services from taking the two examinations next following the completion of such requirements.

(b) An applicant seeking admission under this section shall furnish to the New York State Board of Law Examiners, in addition to the proofs required of applicants for examination, satisfactory proof of compliance with the requirements of this section. The New York State Board of Law Examiners shall, upon acceptance of such proof, certify to the Appellate Division of the Supreme Court in the department in which the applicant resides that examination of the applicant has been dispensed with.

(c) No application for admission under this section shall be granted unless such application is made within two years following the applicant's discharge or release from active service in the armed services.

Historical Note

Sec. added, filed July 7, 1972; amd. filed Dec. 28, 1973 eff. Jan. 1, 1974. substituted. New sec.

520.8 Admission without examination. (a) *General.* In its discretion the Appellate Division may admit to practice without examination an applicant who:

(1) has been admitted to practice in the highest law court in any other State or territory of the United States or in the District of Columbia, or has been admitted to practice as an attorney and counselor at law or the equivalent in the highest court in another country whose jurisprudence is based upon the principles of the English Common Law; and

(2) (i) While admitted to practice as specified in paragraph (1) above, has actually practiced for a period of at least five years;

(a) in its highest law court or highest court of original jurisdiction in the State or territory of the United States, in the District of Columbia or in the common law country where admitted, or

(b) in Federal military or civilian legal service in a position which requires admission to the bar for the appointment thereto or for the performance of the duties thereof, or

(c) in legal service as counsel or assistant counsel to a corporation in the State or territory of the United States, the District of Columbia or in the common law country where admitted, or

(d) in a combination or cumulation of service among the above categories of practice or legal service even if the government service, civilian or

military, was not in a jurisdiction in which the applicant was admitted to practice where the Court of Appeals has determined that such five years of combined or cumulative service is the equivalent of the practice required in (a) above; or

(ii) is a graduate of and has received a first degree in law from an approved law school as defined in section 520.4(b) of these rules and, for a period of at least five years immediately preceding his application, has been employed in this State or in any other State or territory of the United States or in the District of Columbia as a full-time member of the law faculty teaching in a law school or schools on the approved list of the American Bar Association and has attained the rank of professor or associate professor; and

(3) is, and for not less than six months immediately preceding the application has been, an actual resident of the State of New York; and

(4) is over 26 years of age.

(b) *Proof required.* An applicant for admission under this section, shall file with the Clerk of the Appellate Division of the department in which he resides:

(1) a certificate from the clerk of the highest court of the State, territory, district or foreign country in which he has been admitted to practice as an attorney and counselor at law or the equivalent certifying to his admission to practice and the date thereof; and

(2) (i) in the case of an applicant seeking to qualify for admission under subparagraph (a) (2) (i) of this section, a letter of recommendation from one of the judges of the highest law court or highest court of original jurisdiction of such State, territory, district or foreign country; and

(ii) in the case of an applicant seeking admission under subparagraph (a) (2) (ii) of this section:

(a) a certificate from the dean of the law school which employs or employed the applicant certifying to the nature and extent of his employment and the rank attained by him; and

(b) a certificate from an approved law school as defined in section 520.4(b) of these rules certifying to his graduation and a first degree in law; and

(3) a report of the National Conference of Bar Examiners together with such other satisfactory evidence of character and qualifications as may be required.

(c) *Discretion of Appellate Division.* The Appellate Division may in its discretion impose as a condition to admission such other tests of character and fitness as it may deem proper.

(d) *Admission pro hac vice.* An attorney and counselor at law or the equivalent from another State, territory, district, or foreign country may, in the discretion of any court of record, be admitted *pro hac vice:*

(1) to participate in the trial or argument of any particular cause in which he may be for the time being employed, or

(2) to advise and represent clients or participate in the trial or argument of any case, during the continuance of his enrollment as a graduate student or graduate assistant, or during his employment as a law school teacher in a criminal law or poverty law and litigation program in an approved law school in New York State, if in that case he is engaged without fee to advise or represent the client through his participation in an organized defender association or an organized legal services program approved by the county bar association for the county where the principal office of said defender association or legal services program is located. The Appellate Division may require the filing of periodic reports by those organized defender associations and legal services programs giving such details as may be deemed warranted such as the identity of the attorneys and matters handled by graduate students, graduate assistants and law school teachers pursuant to their admission *pro hac vice* under this subdivision, or

(3) provided he be a graduate of an approved law school, to advise and represent clients and participate in the trial or argument of any case during the continuance of his employment or association with an organized legal services program providing legal assistance to indigents, but in no event for longer than 18 months, if in that case he is engaged without fee to advise or represent the client through his participation in or his employment by an organized legal services program approved by the county bar association for the county where the principal office of the legal services program is located. The Appellate Division may require the filing of periodic reports by such legal services programs giving such details as may be deemed warranted such as the identity of the attorneys and matters handled by them pursuant to their admission *pro hac vice* under this subdivision.

Historical Note

Sec. added, filed July 7, 1972; amd. filed Oct. 12, 1973; Dec. 28, 1973 eff. Jan. 1, 1974. New sec. substituted.

520.9 Proof of moral character. (a) *General.* Every applicant for admission to practice must file with a committee on character and fitness appointed by the Appellate Division of the Supreme Court affidavits of reputable persons that he possesses the good moral character and general fitness requisite for an attorney and counselor at law as required by section 90 of the Judiciary Law. The number of such affidavits and the qualifications of persons acceptable as affiants shall be determined by the Appellate Division to which the applicant has been certified.

(b) *Affidavits.* The affidavits filed shall state that the applicant is, to the knowledge of the affiant, a person of good moral character and possesses the general fitness requisite for an attorney and counselor at law and shall set forth in detail the facts upon which such knowledge is based. Such affidavits shall not be conclusive proof as to character and fitness, and the Appellate Division to which the applicant has been certified may inquire further through its committee on character and fitness or otherwise.

(c) *Certificate of New York State Board of Law Examiners.* Every applicant for admission shall file with a committee on character and fitness appointed by the Appellate Division a certificate from the New York State Board of Law Examiners showing his compliance with these rules.

(d) *Discretion of Appellate Division.* The Appellate Division in each department may adopt for its department such additional procedures for ascertaining the moral character and general fitness of applicants as it may deem proper.

Historical Note

Sec. added, filed July 7, 1972; amd. filed Dec. 28, 1973 eff. Jan. 1, 1974. substituted. New sec.

520.10 Application for waiver of rules. The Court of Appeals, upon application, may in its discretion, vary the application of or waive any provision of these rules where strict compliance will cause unnecessary hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief. If the petition is verified outside the State of New York, the applicant shall secure and append to the affidavit of verification of the petition a certificate of the county clerk or other authorized officer that the notary before whom the applicant was sworn was qualified to act at the time the oath was taken.

Historical Note

Sec. added, filed July 7, 1972; amd. filed Dec. 28, 1973; May 9, 1974.

CHAPTER I

State Board of Law Examiners

PART
6000 Rules

PART 6000

RULES

Sec.
6000.1 Proof required of applicants for examination
6000.2 Fees
6000.3 Certification of applicants
6000.4 Examinations
6000.5 Reexamination
6000.6 Review of examination papers by failing applicants

Section 6000.1 Proof required of applicants for examination. Each applicant for examination shall file with the executive secretary of the board, at least 30 days and not more than 60 days* before the date of the examination for which he intends to apply, proof of compliance with the requirements for admission to the examination as prescribed by the rules of the Court of Appeals for the admission of attorneys and counselors at law, from which it shall appear affirmatively and specifically that all such requirements have been fulfilled. Such proof shall include:

(a) *Affidavit.* Each applicant shall file an affidavit, in a form furnished or approved by the board, showing compliance with the requirements of the rules of the Court of Appeals.

(b) *Proof of completion of law study.* (1) Each applicant shall file a certificate of an approved law school, in a form furnished or approved by the board, showing compliance with the requirements of section 520.4 of the rules of the Court of Appeals, or, in the alternative, he shall file appropriate certificates or affidavits, in a form furnished or approved by the board, showing compliance with the requirements of section 520.5 of the rules of the Court of Appeals.

(2) An applicant whose proofs will include a certificate of completion of law study to which he will not become entitled until a date less than 30 days before said examination may file all other proofs as required by this section, with an affidavit of intention to file such additional proof, and such additional proof may then be filed at any time prior to such examination.

(c) *Handwriting specimens.* (1) Each applicant shall file, with his application, two sheets, each containing a copy of this paragraph in the usual handwriting of the applicant and bearing his signature at the end thereof, and containing a certificate by the dean or other authorized official of the law school attended by him, or if the applicant qualifies by law office study, by an attorney with whom he has studied, stating that such copy was written and signed in his presence by the applicant.

(2) If the law school attended by the applicant is more than 100 miles distant from his actual residence, such certification may be made by the dean or other authorized official of such law school on the basis of a comparison with the handwriting of the applicant in the records of such school.

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* Applicants should file their papers well in advance of the required date, but not more than 60 days prior to the date of the examination; amendable defects may be discovered, which can be corrected if attended to promptly.

(d) *Additional proofs.* The board in its discretion may order additional proofs to be filed, and may require an applicant to appear in person before it, or a member thereof, and be examined concerning his qualifications to be admitted to the examination.

Historical Note

Sec. amd. filed Feb. 22, 1973. Substituted "executive secretary" for "clerk".

6000.3 Certification of applicants. Each applicant shall appear for examination in the judicial department in which he actually resided at the time his application for admission to the examination was filed, unless written permission of the board to take the examination elsewhere has been granted. Each applicant who successfully passes the examination will be certified to the Appellate Division of the judicial department in which he actually resided at the time of application for admission to such examination.

6000.4 Examinations. (a) The board will hold examinations twice each year, on two consecutive days, on dates to be announced. Each examination will contain questions in substantive law and adjective law.

(b) The examination will consist primarily of questions dealing with the following subjects which are deemed fundamental:

(1) Agency,
(2) The canons of ethics,
(3) Conflict of laws,
(4) The constitutions of New York State and of the United States,
(5) Contracts,
(6) Corporations,
(7) Criminal law,
(8) Damages,
(9) Domestic relations,
(10) Equity,
(11) Evidence,

(12) Negotiable instruments,
(13) Partnership,
(14) Personal property,
(15) Pleading,
(16) Practice,
(17) Real property,
(18) Sales,
(19) Suretyship,
(20) Taxation,
(21) Torts,
(22) Trusts, and
(23) Wills.

Questions may also deal with the following subjects:

(24) Administrative law,
(25) Bankruptcy,
(26) Carriers,
(27) Federal jurisdiction,
(28) Insurance,
(29) Labor law, and
(30) Municipal corporations.

(c) The foregoing lists indicate the general scope of the examination, but the board may propound any questions which a lawyer in general practice may reasonably expect to meet.

Historical Note

Sec. amds. filed: Dec. 10, 1969; Feb. 22, 1973. Added "Labor law" in (b).

6000.5 Reexamination. An applicant for reexamination shall make application therefor at least 30 days and not more than 60 days before the examination at which he intends to appear and file with the executive secretary of the board, at the same time, the fee for reexamination prescribed by section 465 of the Judiciary Law and an affidavit, in a form furnished or approved by the board, stating the facts in relation to his actual residence in this State and showing compliance with section 520.6(c) of the rules of the Court of Appeals.

Historical Note

Sec. amd. filed Feb. 22, 1973. Substituted "executive secretary" for "clerk".

6000.6 Review of examination papers by failing applicants. (a) An applicant who has failed the examination may compare the answers on his examination papers with the model answers prepared by the board, at the offices of the board in Albany, New York, on any of the 20 business days commencing on the next business day following publication of the results of the examination. The applicant may be accompanied by any attorney duly admitted to practice law in the State of New York, provided that such attorney is not in any way associated with a "bar review course".

(b) For purposes of this section:

(1) the term "bar review course" shall mean any program of study, other than the curriculum of an approved law school, intended to prepare applicants for the New York State bar examination;

(2) the term "business day" shall mean any day, between the hours of 9 a.m. and 4:45 p.m., other than Saturday, Sunday or a legal holiday.

Historical Note

Sec. filed Nov. 15, 1973 eff. immediately.

APPENDIX A-11

CERTIFICATE OF COMMENCEMENT OF CLERKSHIP

(Type or print)

I, the undersigned, an attorney admitted to practice law in the State of New York, do hereby certify that .....

(Type or print name of regular law clerk and student)

who is at least eighteen years of age, having been born at .....
..... on the ..... day of ....., 19....
has this day commenced the study of law in my office located at .....
.....
New York, as a regular law clerk and student under section 520.5 of the rules of the Court of Appeals for the admission of attorneys and counselors at law (22 NYCRR 520.5).

Dated ....., 19.....

.....
Attorney at Law
Name .....
Address .....
.....
.....
Date of Admission .....

SCHEDULE A

(To be completed by law clerk/student)

(1) Pre-legal education*:

(2) Legal education:

* State either college or university degree or degrees, the college or university and the date; or, if not a graduate of an accredited college, the number of your law student's qualifying certificate.

2042.20 JUD 12-31-71

APPENDIX D—VERIFIED PETITION AND EXHIBITS

COURT OF APPEALS
STATE OF NEW YORK

In the Matter of the Application
of Samuel H. Sloan for waiver of
the educational requirements of
22 NYCRR 520.3, 520.4, 520.5.

COMMONWEALTH OF VIRGINIA
CITY OF LYNCHBURG] SS:S

Samuel H. Sloan, being duly sworn, deposes and says:

1. I make this application for waiver of the educational requirements of 22 NYCRR 520.3, 520.4, 520.5 so that I may have permission to take the New York State Bar Examination in spite of the fact that I have never attended a recognized law school.

2. On June 10, 1974, I made application for this identical relief. A copy of that application is attached hereto and marked Exhibit A. On June 17, 1974 that application was denied. A copy of the notice of the denial of that application is attached hereto and marked Exhibit B.

3. Subsequently, I petitioned the United States District Court for the Southern District of New York for admission to the bar of that court. A copy of that petition is attached hereto and marked Exhibit C. The petition was denied in a decision of the Hon. Richard Owen which is attached hereto and marked Exhibit D.

4. I now renew this petition because intervening circumstances have again emphasized the necessity of my admission to the bar. Furthermore, I wish to assert constitutional grounds upon which I am basing this application for permission to take the bar examination.

5. The intervening circumstances are that on May 27, 1975 the Supreme Court, Appellate Division, First Department rendered a decision which was adverse to me. In so doing, it vacated a judgment in the amount of $7,267.02 which was entered in my favor by the Supreme Court trial judge, Egeth, J., and entered a judgment in favor of my adversary in the amount of $5,662.50. The resulting change represented a total loss to me of approximately $13,000 when interest is included. A copy of the decision of the Appellate Division is attached hereto and marked Exhibit E. A copy of the decision of the trial judge is attached hereto and marked Exhibit F.

6. I have just filed a notice of appeal. Therefore, this appeal will be heard at sometime in the future by the Court of Appeals. I wish to be granted permission to take the forthcoming bar examination in the hopes that if I pass I will be admitted to the bar in time to be able to argue my appeal orally in the Court of Appeals without any prejudice resulting from the fact that I am not a member of the bar of this court.

7. I realize that it may be the policy of this court to permit pro se litigants to argue their own cases under certain circumstances. Nevertheless, I believe that I have a right under the Fifth and Fourteenth Amendments to the Constitution of the United States to enjoy the fruits of my labors and that if I have the knowledge and the ability to pass the bar examination that I should not be deprived of the right to practice law and to represent individuals other than myself. For a more complete statement of this point, I refer this court to the accompanying memorandum of law.

8. I am presently convalescing in Lynchburg, Virginia due to the fact that on March 9, 1975 I was struck by an automobile with the result that both of my legs were broken. However, my residence address is 1761 Eastburn Avenue, Apartment A5, Bronx, New York. I have paid the necessary fees so that I may be able to take the LSAT

examination on July 26, 1975. However, regardless of what score I make on that examination, I consider the possibility that I may be admitted to any recognized law school to be remote because I never graduated from college and because my grades, when I did attend college, were marginal. In addition, even if I were admitted to a law school I am afraid that I might experience academic failure because I have never done well in school. For example, even though I made an 800 (a perfect score) on my advanced math achievement test, which was about 200 points better than any other student in my high school, I had previously failed my high school geometry final examination. In general, I can fairly state that I always do well in adversarial or competitive activities whereas I always do badly in anything that is purely academic.

9. I attended the University of California at Berkeley off and on from 1962 until 1967. I majored in math and later in criminology. Whenever I took an examination comparable to the LSAT, I always did well and generally scored in the top percentile. As noted previously, I made 800 in my Advanced Mathematics Achievement Test. My scores in all tests administered by the Educational Testing Service, which also administers the LSAT, averaged to around 700. When I was a sophomore at the University of California at Berkeley I was given an examination by the counseling department at the University and I was told that this test indicated that I was in the 99++ percentile of all University of California sophomores in terms of my ability to do college level work. This presumably would place me in the top 10 students in a sophomore class of 4,000. In my opinion, these results indicate that I will do well on the LSAT.

10. However, even if I score well on the LSAT, and even if some law school were to accept me, I could not begin school any earlier than September, 1976 because none of the schools I have contacted are still accepting applicants for the term beginning September, 1975. Thus, if I am

required to fulfill the educational requirement, I could not take the bar examination and become a member of the bar prior to the Summer of 1979.

11. In the summer of 1972 I took the Bar Review Course given by the Practicing Law Institute. Since that time, I have become thoroughly familiar with the CPLR. I own a complete copy of the Lawyers Edition, Supreme Court Reports, Second Series and I spend most of my time reading law. Although my knowledge of certain areas of the law may be weak I nevertheless feel that I would pass the bar examination if given the opportunity to take it. Therefore, I request permission to take the bar examination.

12. I further request that if my application is denied that it be so ordered by this Court. It is my intention to petition the Supreme Court of the United States for a writ of certiorari if this application is denied. It appears that, under Rule 23 of the rules of the Supreme Court, that I cannot do so unless the court orders that my application be denied. Nor does it appear that there is any other remedy to alleviate what I consider to be an unconstitutional circumstance, namely the requirement that I attend law school in order to become a member of the bar. In essence, I am asking that this court certify a controlling proposition of law, namely, whether the requirement that one attend law school in order to become a member of the Bar of the State of New York violates the rights and liberties guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, I respectfully pray that my application for permission to take the bar examination be granted.

s/ Samuel H. Sloan
Samuel H. Sloan

SWORN TO BEFORE ME THIS
4th DAY OF JUNE, 1975.
s/ Mary P. White
NOTARY PUBLIC
My commission expires June 7, 1977.

EXHIBIT A

Samuel H. Sloan
120 Liberty St.
New York, N.Y. 10006
June 10, 1974

State of New York Court of Appeals
Clerk's Office
Court of Appeals Hall
Albany, N.Y.

Dear Sirs:

This letter is an application for the waiver of the Rules of the Court of Appeals for the admission of attorneys and Counselors-at-law on the grounds that the rigid enforcement thereof will cause unnecessary hardship to the applicant.

I am 29 years old and have 106 college credits primarily from the University of California at Berkeley where I was a student during the years from 1962 to 1967. When I commenced my studies at Berkeley I was a mathematics major but later I switched to Criminology. At the end of 1967 I came to New York City as a member of the University of California Chess Team. I decided to stay in New York temporarily and to go to work on Wall Street rather than to return to being a student. During the 1968 bull market, it appeared to me that there would be great opportunities in the securities industry and for that reason I chose to become a professional over-the-counter trader rather than to return to my studies. In May of 1970, after working for Hayden, Stone, Inc. for two years, I decided to form my own registered broker-dealer under the firm name and title of Samuel H. Sloan & Co.

I was never a good student but nevertheless I was capable of academic achievement. I went to high school in Lynchburg, Virginia. I studied mathematics on my own and

got an 800 (a perfect score) on my Advanced Math Achievement College Board. However, my high school grades in mathematics were barely above average. Similarly, I was a winner in the Virginia Science Talent Search, but my grades in high school science were mediocre. The reason for these diverse results was that I invariably did best when I studied on my own rather than as a part of a formal curiculum.

I have always been interested in entering the legal profession because I feel I have a certain natural aptitude towards this area. My father is a lawyer and a member of the Virginia Bar and my mother is a psychiatrist. I finished second in the U.S. Amateur Chess Championship in 1969. I believe I have the ability to think and reason in the manner required by the legal profession.

Nevertheless, in order for me to become a lawyer under the Rules I would have to attend law school for three years or become a law clerk for four years. This would be difficult for me because I never graduated from college and my grades were poor so I would probably experience difficulty in gaining admission to law school. More importantly, I am already something of a self-made man having spent my last six years in the securities industry. It would be too great a sacrifice to make the changes in my life that would be necessary for me to go to school to become a lawyer. Also, as I have noted previously, I can learn much faster and more efficiently by studying on my own rather than by taking formal courses. For me there is no attraction to attending classes, particularly at this stage in my life.

Furthermore, being a clerk for a lawyer holds no attraction for me. To begin with, my income from my securities business in 1972 was in excess of $50,000. Under these circumstances it would be silly for me to go to work as a clerk for somebody else. Also, I prefer to work for myself rather than to hold a salaried position. In addition, I already know a lot of law. In 1972, in order to enhance my

knowledge of federal securities law, I took a summer bar review course at the Practicing Law Institute. Subsequently, I subscribed to the New York Law Journal, the New York Reporter, the Federal Reporter, the Federal Supplement, and the Commerce Clearing House Federal Securities Law Reporter. I got in the habit of spending my spare time reading these publications. In addition, I purchased a number of law books, particularly in the securities field, which I consulted frequently.

For this reason, I feel that if I were allowed to take the bar examination I would pass. Before I would take the bar exam I would, of course, study extensively on my own. If I were permitted to practice law I would become a specialist in the area of federal securities law. This is an area in which I feel there is a shortage of legal talent. I would possibly have unique qualifications in this area, being perhaps the only lawyer who was also the sole proprietor of his own securities firm.

Under the circumstances I have described, I believe that the Court of Appeals should waive the educational and work experience requirements and permit me to take the bar examination. It is within the tradition of the legal profession to permit qualified persons to enter without respect to their educational background. Abraham Lincoln and Justice Black are two well-known examples of distinguished lawyers who never attended law school and who possibly would never have become lawyers had law school been a pre-requisite to admission to the bar. Therefore, I pray that the Court of Appeals grant this application.

Respectfully submitted,

s/ Samuel H. Sloan

Samuel H. Sloan

EXHIBIT B

[Letterhead of State of New York, Court of Appeals, James M. Flavin, Clerk, Clerk's Office, Albany, 12207].

June 17, 1974

Mr. Samuel H. Sloan
120 Liberty Street
New York, N.Y. 10006

In the Matter of the Application of Samuel H. Sloan for waiver of the educational requirements of 22 NYCRR 520.3, 520.4, 520.5.

Dear Mr. Sloan:

I am directed by the Court of Appeals to advise you that your petition in the above captioned proceeding has been denied.

Very truly yours,
s/ James M. Flavin
James M. Flavin
Clerk

AO'B:js

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN,
Petitioner.

VERIFIED PETITION FOR ADMISSION TO THE BAR

State of New York)
: ss.:
County of New York)

Samuel H. Sloan, being duly sworn, deposes and says:

1. In accordance with Rule 3(a) of the General Rules of the United States District Court for the Southern District of New York I hereby petition to be admitted to the practice of law in this court.

2. I reside at 102-31 165th Ave., Queens, New York and I have an office at 120 Liberty St., New York, New York 10006. I have never been admitted to the practice of law in any court. I have never been held in contempt of court nor have I ever been censured, suspended or disbarred by any court. I have never attended a recognized law school. My legal training consists of a bar review course I took at the Practicing Law Institute during the summer of 1972. My legal experience consists of several lawsuits, primarily securities suits, in which I have appeared as plaintiff or defendant pro se. I have appeared in actions in the United States Court of Appeals, in the Supreme Court of the State of New York, County of New York, and in the Civil Court for the City of New York. I have also appeared in actions in this Court before Judge Bauman in *Sloan v. Nixon*, 60 F.R.D. 228 (1973); I appeared before Judge Ward in *S.E.C. v. Samuel H. Sloan & Co.*, 369 F. Supp. 996 (1974); and I appeared before Judge Bonsal in *Sloan v. Canadian Javelin Ltd.*, (CCH Fed. Sec. Law Rep. #94,579 (1973-4 volume)). Presently I am the plaintiff in an action entitled

Sloan v. Securities & Exchange Commission, 74 Civil 2792 (TPG) and I have a motion pending before Judge MacMahon in *S.E.C. v. Canadian Javelin Ltd.*, 73 Civil 5074.

3. During the course of preparing my papers in these lawsuits I have spent a substantial amount of time studying law. At one time I subscribed to the Federal Reporter, the Federal Supplement, the New York Reporter, the Commerce Clearing Federal Securities Law Reporter, and the New York Law Journal. I also purchased a number of law books from Clark Boardman & Co. I have spent most of the past year and a substantial portion of the previous year reading and studying law.

4. I have read and am familiar with the provisions of the Judicial Code contained in Title 28 of the U.S. Code which pertain to the jurisdiction of, and practice in, the United States District Courts. I have also read and am familiar with the Rules of Civil Procedure for the district courts, the Rules of Criminal Procedure for the district courts and the Rules of the United States District Court for the Southern District of New York. I have read the Canons of Ethics of the American Bar Association and I agree to adhere faithfully thereto.

5. On June 10, 1974 I applied to the Court of Appeals of the State of New York for a waiver of the Rules of the Court of Appeals for the admission of attorneys and Counselors-at-law on the grounds that the rigid enforcement thereof will cause unnecessary hardship to the applicant. That application was denied. A copy of the application and the denial are attached hereto as exhibits.

6. I am prepared to take the bar examination of the State of New York or any examination deemed appropriate by this Court for the purpose of determining my qualifications to practice law in this Court.

7. I claim that in denying my application for a waiver of the Rules, the Court of Appeals deprived me of liberty without due process of law in contravention of the Fifth

Amendment to the Constitution to the United States and as the Fourteenth Amendment to the Constitution of the United States. I claim that I have the constitutional right to practice law. I have spent a substantial amount of time studying law and I should be accorded the privilege of practicing law before this Court. The authorities which I believe pertain to this point are: *Allgeyer v. Louisiana* (1897) 165 U.S. 578, 17 S.Ct. 427, 41 L.Ed. 832; *Konigsberg v. State Bar of California* (1957) 353 U.S. 252, 1 L.Ed. 2d 810, 77 S.Ct. 722; *Schware v. Board of Bar Examiners* (1957) 353 U.S. 232, 1 L.Ed. 2d 796, 77 S.Ct. 752, 64 ALR 2d 288; and *Greene v. McElroy* (1959) 360 U.S. 474, 3 L.Ed. 2d 1377, 79 S.Ct. 1400.

8. I realize that the authorities I have cited are not depositive of the question of whether I should be permitted to practice law in this Court. However, I believe that they point strongly in that direction. I am prepared to satisfy every requirement for the practice of law in this Court except the requirement that I be a member to the bar of the State of New York or the bar of another state. I contend that this requirement is arbitrary and capricious and bears no relation to the question of my ability to practice law in this Court. I further contend that the requirement which the Court of Appeals of the State of New York would impose upon me that I attend law school for the requisite period of time is arbitrary and capricious. I can see no purpose for this requirement and, for that reason, I claim that this requirement is unconstitutional.

WHEREFORE, the petitioner respectfully prays that the petition be granted and that the petitioner be permitted to practice law in this court.

Sworn to before me this
9 day of August, 1974

s/ Samuel H. Sloan
SAMUEL H. SLOAN
127 Liberty St.
New York, N.Y. 10006
(212) 835-4512

s/ James J. Leary, Jr.
NOTARY PUBLIC
JAMES J. LEARY, JR.
Notary Public, State of New York
No. 03-7461190
Qualified in Bronx County
Cert. Filed in New York County
Commission Expires March 30, 1976

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN,
Petitioner.

VERIFIED PETITION FOR
ADMISSION TO THE BAR

Samuel H. Sloan
Office and Post Office Address, Telephone
120 Liberty St.
New York, N.Y. 10006
(212) 853-4512

The petition is denied. The petitioner has not met the court's requirements for admission. As applied to him these rules are constitutional.

So ordered
s/ Richard Owen

August 12, 1974

EXHIBIT E

At a term of the Appellate Division of the Supreme Court
held in and for the First Judicial Department in the County of
New York, on May 27, 1975.

Present—Hon. Harold A. Stevens, Presiding Justice,
Francis T. Murphy, Jr.,
Vincent A. Lupiano,
Louis J. Capozzoli,
Emilio Nunez, Justices.

Edwards & Hanly, a Limited Partnership,
Plaintiff-Appellant-Respondent,

-against-

Samuel H. Sloan, d/b/a Samuel H. Sloan & Co.,
Defendant-Respondent-Appellant.

Cross-appeals having been taken to this Court by the plaintiff-appellant-respondent and by the defendant-respondent-appellant from a judgment of the Supreme Court, New York County (Egeth, J.), entered on December 9, 1974, adjudging that plaintiff recover of defendant the total sum of $14,025.70 and that defendant recover of plaintiff the total sum of $7,267.02, and an appeal having been taken by plaintiff-appellant-respondent from an order of said court entered on January 13, 1975, denying its motion to set aside the prior decision and for a new trial with respect to defendant's counterclaim, and said appeal having been argued by Mr. Evan L. Gordon of counsel for the appellant, and by Mr. Samuel H. Sloan, defendant-respondent-appellant pro so, and due deliberation having been had thereon, and upon the memorandum decision of this Court filed herein.

It is unanimously ordered that the judgment so appealed from be and the same is hereby modified, on the law and on the facts, to the extent of dismissing defendant's counterclaim and reducing plaintiff's recovery to $5,662.50 and, as so modified, the judgment is affirmed, without costs and without disbursements.

It is further unanimously ordered that the order so appealed from be and the same is hereby affirmed, without costs and without disbursements.

ENTER:

HYMAN W. GAMSO

Clerk.

Stevens, P.J., Murphy, Lupiano, Capozzoli, Nunez, JJ.

428-29 Edwards & Hanly, etc.,
Plaintiff-Appellant-Respondent, E.L. Gordon

-against-

Samuel H. Sloan, etc.,
Defendant-Respondent-Appellant. Pro Se

Judgment, Supreme Court, New York County, entered on December 9th, 1974, after trial (Egeth, J.), awarding defendant judgment in the sum of $7,267.02, unanimously modified on the law and on the facts to the extent of dismissing defendant's counterclaim and reducing plaintiff's recovery to $5,662.50 and, as so modified, the judgment is affirmed, without costs and without disbursements. Order entered on January 13th, 1975, denying plaintiff's motion for a new trial with respect to the counterclaim, affirmed, without costs and without disbursements.

The Trial Court improperly awarded defendant judgment on his counterclaim. The delivery by defendant of the 1000 shares of Canadian Javelin did not, as found by

the Trial Court, constitute a sale by defendant and transfer of title to plaintiff. Once it became apparent that defendant had, on his own behalf, engaged in short selling, as prohibited in the account, which defendant maintained with plaintiff, the latter acted properly in buying-in. When defendant thereafter delivered the 1000 shares of Canadian Javelin, plaintiff was entitled to assert a lien thereon as pledgee. Plaintiff did not become the purchaser of the 1000 shares. The counterclaim is dismissed.

The Trial Court correctly validated plaintiff's action in buying the defendant in, but it miscalculated the difference between the selling and reacquisition price of the 4000 shares of Canadian Javelin so purchased, the actual difference being only $5,662.50. Plaintiff's recovery should be so reduced. There is no merit to defendant's claim that plaintiff could not buy-in without first notifying him. Moreover, such failure to notify defendant was of no moment since defendant could not have prevented the buy-in as he did not have the shares to tender.

We have examined the other contentions of defendant and find them to be without merit.

Order filed.

Stevens, P.J., Murphy, Lupiano, Capozzoli, Nunez, JJ

M-1189

Edwards & Hanly, etc. v. Samuel H. Sloan, etc.

Motion to dismiss appeal denied in view of the determination of this Court on Appeals Nos. 428-29 decided simultaneously herewith. Order filed.

EXHIBIT F

MEMORANDUM DECISION OF EGETH, J.

SUPREME COURT : NEW YORK COUNTY
TRIAL TERM : PART 18

(Same Title)

EGETH, J.:

This action in which the defendant Samuel H. Sloan, d/b/a Samuel H. Sloan & Co. appeared pro se, was tried by the Court without jury.

Plaintiff commenced an action to recover the sum of $6611.42, representing the cost of purchase of 4000 shares of a certain stock, together with the commissions ordinarily payable by reason of such sale. At trial, plaintiff agreed to waive its claim of commissions and thereby reduce the total amount of its claim to $6264.42.

Defendant interposed a number of counterclaims totaling $7,018,000 based upon a variety of causes of action in contract, tort and for punitive damages. After a conference with the Court prior to and during the commencement of the trial, during which the various counterclaims were analyzed, the Court granted motions to dismiss all counterclaims predicated upon tort and punitive damages, which totaled $7,000,000. The Court also reduced the counterclaim asserted by the defendant in the sum of $18,000 to $13,000. After the said dispositions, the sole remaining counterclaim was defendant's counterclaim in the sum of $13,000 claimed to have been the price that plaintiff agreed to pay to defendant upon delivery of 1000 shares of Canadian Javelin Ltd. stock.

At trial the Court found the following facts: The defendant Sloan & Co. was functioning as a broker-dealer with authorization from the Securities & Exchange

Commission as a partnership until January 11, 1971. Thereafter, the partnership terminated, the Securities & Exchange Commission rejected a proposed amendment to the broker-dealer authorization in the sole name of Samuel H. Sloan, but the defendant Sloan & Co. continued to operate as if its broker-dealer authorization had been unchanged. It further appears that following a hearing by the Securities & Exchange Commission, an order was entered on April 24, 1973 revoking the broker-dealer registration of Sloan & Co., and barring Samuel H. Sloan individually from association with a broker-dealer, but that said order has not become final pending administrative appeal. At all times hereinafter referred to, the defendant Sloan & Co. was not a member of any listed exchange nor a member of the N.A.S.D.

The testimony reveals that in July of 1973 the defendant had a cash omnibus account with plaintiff Edwards & Hanly, and also a stock loan account. In said month the defendant placed orders to sell 4000 shares of Canadian Javelin Ltd. stock with plaintiff. It is unrefuted that at the time the orders were placed defendant did not have the shares representing such sales in his possession and was engaged in short selling. Plaintiff was unaware at the time it received the orders that they represented short sales in a cash account. Expert testimony disclosed that such short sales in cash accounts by defendant, without possession of sufficient shares for consummation, constituted a violation of the margin requirements set forth by the Federal Reserve Board and particularly in Regulation T of its regulations, to which all broker-dealers and all securities exchange transactions are subject. Such condition is also violative of Section 10A-1 of the Securities and Exchange Act and the Rules and Regulations of the American Stock Exchange. (Rule 425 and Rule 411). Violations by defendant also unwittingly placed the plaintiff, Edwards & Hanly, in a position in which it was in violation of the very same Rules and Regulations.

There is uncontroverted testimony that some time thereafter the American Stock Exchange communicated with plaintiff and made inquiry as to the sales in question. In so doing, the plaintiff was advised that the defendant was engaged in similar types of short sales in cash accounts with other brokerage houses. This alerted plaintiff to the fact that it was in violation of numerous regulations by virtue of the transaction. Plaintiff immediately sought to clarify and remedy its legal position by covering the short sales. Unrefuted testimony disclosed unsuccessful telephone attempts to reach the defendant in order to advise the defendant of an intent to purchase the 4000 shares of stock required to cover in the open market. The shares were purchased by the plaintiff to rectify its legal position, which prior notice to the defendant, and as a result thereof plaintiff sustained a loss of the difference between its purchase price and the price of the short sales, which came to $6264.42.

The day following this purchase, defendant communicated with plaintiff and offered plaintiff 1000 shares of Canadian Javelin Ltd. stock which then had a market value of $13 per share. The said stock was delivered to the office of the plaintiff following an oral agreement to immediately pay the sum of $13,000 to the defendant as the proceeds of said stock. After delivery of the stock, and while defendant was awaiting the receipt of a check in the sum of $13,000, a senior officer of plaintiff communicated to the defendant that payment would not be made, and that the shares delivered into its possession would be retained until such time as the defendant's account with plaintiff was placed in balance. The failure to deliver the $13,000 provides the basis for the defendant's counterclaim. It appears that subsequent thereto, in an effort to buttress legal position, plaintiff procured an ex parte order of attachment for the 1000 shares in question and maintains the position that it was retaining possession thereof for the account of defendant until clarification of the rights

of the parties and the respective equities, one to another.

In defense of plaintiff's main action, defendant contends that plaintiff was not authorized to purchase the 4000 shares of stock to cure the short sale of the defendant, without giving the defendant prior notice of an intention to so do and an opportunity to cure his position.

The Court took extensive testimony from expert authorities as to the legal requirements and the customs in the industry with respect to the necessity of providing defendant prior notice of the intention to buy. On the basis thereof, the Court determines that there is no legal regulation or statute which affords the defendant any right to prior notice under the circumstances in this case. Said testimony further disclosed that there are certain practices and customs requiring notice extant between brokerage firms which are members of the American Stock Exchange and/or NASD. They are not however applicable to the instant transaction inasmuch as the defendant is neither a member of the American Stock Exchange nor the NASD. The expert testimony clearly revealed the necessity of immediate efforts by the plaintiff to purchase the stock in question, and to thereby cure its position of violation of appropriate regulations in which it had been placed by defendant's action.

Upon the basis thereof, this Court determines that plaintiff acted properly in so doing and that the defendant is liable to plaintiff for all loss arising out of the transaction, despite the fact that defendant received no immediate prior notice of the intention of plaintiff to purchase the stock. Accordingly, judgment is awarded to plaintiff in the sum of $6264.42 on this main cause of action, together with the interest demanded in the complaint.

With respect to the counterclaim of the defendant, it is uncontroverted that the 1000 shares were delivered into the possession of the plaintiff pursuant to an express promise

to pay $13,000 almost simultaneously therewith. The plaintiff does not deny the allegations with respect thereto in its pleadings and the factual allegations are therefore deemed admitted. Plaintiff contends that notwithstanding this express agreement, it is not bound by the promise of any lower level employee who made such representation to defendant, and further, in any event, that the transaction was subject to a resolution of all outstanding balances in the defendant's account. Defendant maintains that the stock was only delivered in response to the express promise to pay $13,000 and that the delivery thereof constituted a consummated transaction which created an obligation from plaintiff to defendant in the sum of $13,000. In an attempt to support its argument, the plaintiff offered into evidence a copy of the receipt, acknowledged to be given to defendant, which contains thereon the legend, "subject to count" and/or "subject to count and examination." This Court determines that such legend had no effect upon the transfer of title of the stock from the defendant to the plaintiff unless in fact the number of the securities in question was not that which it was described to be. This Court further determines that notwithstanding the desires of the plaintiff Edwards & Hanly to balance out its account, and to recoup any monies which might to be due to it from the defendant, the transaction involving the delivery of the 1000 shares of Canadian Javelin Ltd. stock constituted a present sale by defendant and transfer of title to plaintiff of the said stock at the moment of its delivery in exchange for plaintiff's promise to pay the sum of $13,000. Once title passed from the defendant to the plaintiff, the risk of loss arising from depreciation of the value of the stock, or the right to any gain arising from an appreciation of the value of the stock, remained with plaintiff. The fact that plaintiff misconstrued its legal position, and subsequently attempted to justify its retention of the stock by procuring an attachment order, is wholly irrelevant to the acutal ownership rights of the parties. At the time of the

procurement of the attachment, plaintiff already owned the stock, and in effect procured an order attaching its own property, which obviously is a legal nullity. The plaintiff is accordingly obligated to make payment to the defendant in the sum of $13,000 in accordance with its contract at the time of the delivery of the 1000 shares into its possession. (Plaintiff stipulates to the $13,000 amount although the exact amount might have been $12,852.13).

Plaintiff is entitled to set off the $6264.42 owed to it against the $13,000 which it owes the defendant on the counterclaim. Accordingly, after deduction of the said sum of $6264.42 from the $13,000 owed to defendant, defendant is entitled to judgment against the plaintiff on its counterclaim in the net sum of $6735.58. Defendant may therefore enter judgment against the plaintiff in the aforedescribed sum of $6735.58, with interest thereon from August 15, 1973. Said judgment shall not include costs in view of plaintiff's recovery in the main action.

This constitutes the decision of the Court pursuant to the provisions of Section 4213 CPLR.

Dated: November 26, 1974

s/ M.E.
J.S.C.

SHANLEY N. EGETH

FILED
NOVEMBER 27, 1974
NEW YORK
COUNTY CLERK'S OFFICE

APPENDIX E—LETTER DATED AUGUST 28, 1974 FROM THE CLERK OF THE STATE OF NEW YORK COURT OF APPEALS TO SAMUEL H. SLOAN

[Letterhead of State of New York, Court of Appeals, James M. Flavin, Clerk, Clerk's Office, Albany 12207].

August 28, 1974

In the Matter of the Application of SAMUEL H. SLOAN for waiver of the educational requirements of 22 NYCRR 520.3, 520.4, 520.5.

Dear Mr. Sloan:

The Court has asked me to advise you that it will not issue an order of denial in the above entitled matter. You may proceed if so advised on the Court's administrative determination as noted by my letter of June 17, 1974.

Very truly yours,
s/ James M. Flavin
James M. Flavin
Clerk

AO'B/dh

To:
Mr. Samuel H. Sloan
120 Liberty Street
New York, New York